

## United States Postal Service

## § 963.17

support his or her request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall consider the convenience and necessity of the parties and the relevance of the evidence to be offered.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997; 63 FR 66053, Dec. 1, 1998]

### § 963.9 Election as to hearing.

If both parties elect, an oral hearing may be waived and the matter submitted for decision on the basis of the petition and answer, and of any documentary evidence or briefs requested by the presiding officer. The written election to waive oral hearing must be received by the Recorder no later than 10 days prior to the scheduled hearing date.

### § 963.10 Continuances and extensions.

Continuances and extensions will be granted by the presiding officer for good cause shown.

### § 963.11 Default.

If a petitioner, without notice or cause satisfactory to the presiding officer, fails to appear at the hearing or comply with any of the provisions of these rules or an order issued by the presiding officer, the petitioner may be deemed to have abandoned his or her petition and to have acquiesced in the allegations of the complaint. The presiding officer thereupon may find the petitioner to be in default and refer the matter to the Judicial Officer for dismissal of the petition.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

### § 963.12 Settlement agreements.

These rules do not preclude the disposition of any matter by agreement between the parties at any stage of the proceeding.

### § 963.13 Subpoenas and witness fees not authorized.

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a petitioner's witnesses or for depositions requested by a petitioner.

### § 963.14 Discovery.

Discovery is to be conducted on a voluntary basis to the extent possible. The presiding officer may, upon application of either party, order such discovery as he or she deems reasonable and necessary. Discovery may include one or more of the following: production of documents, requests for admissions, interrogatories, depositions, and witness lists. The presiding officer will establish the terms upon which requested discovery will be allowed.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

### § 963.15 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements of fact are encouraged and may be received in evidence.

### § 963.16 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

### § 963.17 Proposed findings of fact and conclusions of law.

(a) Each party who participates in the hearing may, unless the presiding

## § 963.18

officer orders otherwise, submit proposed findings of fact, conclusions of law, orders, and supporting reasons, either in writing or orally at the discretion of the presiding officer. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders, and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder, who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders, and supporting reasons shall be the same for both parties. If not submitted by such date, unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be stated separately.

[52 FR 18912, May 20, 1987; 52 FR 20599, June 2, 1987]

## § 963.18 Initial decision.

Unless given orally at the conclusion of the hearing, the presiding officer shall render an initial decision as expeditiously as practicable following the conclusion of the hearing and the receipt of the proposed findings and conclusions, if any. The initial decision becomes the final agency decision if a timely appeal is not taken.

## § 963.19 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after the receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues de novo.

## § 963.20 Final agency decision.

The Judicial Officer, or by delegation the Associate Judicial Officer, renders

## 39 CFR Ch. I (7–1–03 Edition)

the final agency decision which will be served upon the parties. If the decision is that the Postal Service's prohibitory order was violated, the Recorder shall provide a certified copy of the record to the General Counsel for use in seeking court enforcement of the order.

## § 963.21 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding constitute the official record of the proceeding.

## § 963.22 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[52 FR 18912, May 20, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

## PART 964—RULES OF PRACTICE GOVERNING DISPOSITION OF MAIL WITHHELD FROM DELIVERY PURSUANT TO 39 U.S.C. 3003, 3004

Sec.

- 964.1 Authority for rules.
- 964.2 Scope of rules.
- 964.3 Customer petitions; notice of hearing; answer; summary judgment.
- 964.4 Hearings.
- 964.5 Election as to hearing.
- 964.6 Default.
- 964.7 Presiding officers.
- 964.8 Subpoenas and witness fees not authorized.
- 964.9 Discovery; interrogatories; admission of facts; production; and inspection of documents.
- 964.10 Evidence.
- 964.11 Transcript.
- 964.12 Computation of time.
- 964.13 Continuances and extensions.
- 964.14 Proposed findings of fact and conclusions of law.
- 964.15 Decisions.
- 964.16 Appeal.
- 964.17 Final agency decision.
- 964.18 Compromise and informal disposition.
- 964.19 Orders.
- 964.20 Modification or revocation of orders.
- 964.21 Official record.
- 964.22 Public information.
- 964.23 Ex Parte communications.

AUTHORITY: 39 U.S.C. 204, 401, 3003, 3004.